

HOUSE BILL 787

By Gilmore

AN ACT to amend Tennessee Code Annotated, Title 40,
Chapter 32, relative to expungement of records.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-32-101, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a)

(1)

(A) All public records of a person who has been charged with a misdemeanor or a felony shall, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed, if:

(i) The charge has been dismissed;

(ii) A no true bill was returned by a grand jury;

(iii) A verdict of not guilty was returned, whether by the judge

following a bench trial or by a jury;

(iv) The person was arrested and released without being charged;

or

(v)

(a) Fifteen (15) years or more have elapsed since the date of conviction for the offense being expunged and the petitioner has not been convicted of any other offense, excluding minor traffic violations, during such period of time;

(b) Any period of supervision due to conviction has been completed;

(c) The offense was a misdemeanor, Class C, D or E felony not otherwise excluded pursuant to subdivision (a)(1)(A)(v)(d), or, if committed prior to November 1, 1989, would be an included Class C, D or E felony if committed after that date; and

(d) The offense was not a Class A or Class B felony or a Class C felony described in § 40-15-105(a)(1)(B)(iii), a sexual offense described in § 40-15-105(a)(1)(B)(ii), or an offense prohibited by title 55, chapter 10, part 4, or vehicular assault as prohibited by § 39-13-106, or, if committed prior to November 1, 1989, would not be an excluded offense if committed after that date.

(B) A person applying for the expunction of records because the charge or warrant was dismissed in any court as a result of the successful completion of a pretrial diversion program pursuant to §§ 40-15-102 - 40-15-107, shall be charged the appropriate court clerk's fee pursuant to § 8-21-401 for destroying such records.

(C) A person applying to a court after October 1, 1998, for the expunction of the person's records following the successful completion of a judicial diversion program authorized by § 40-35-313 shall be charged a fee of fifty dollars (\$50.00). The fee shall be transmitted and used in the manner set out in § 40-35-313(d)(2).

(D) Notwithstanding the provisions of subdivisions (a)(1)(B) and (C), the records of a person who successfully completes a pretrial diversion program pursuant to §§ 40-15-102 - 40-15-107, or a judicial diversion program pursuant to

§ 40-35-313, shall not be expunged pursuant to this section, if the offense for which the person was diverted was a sexual offense as defined by § 40-39-202, or a violent sexual offense as defined by § 40-39-202.

(E) A person shall not be entitled to the expunction of such person's records in a particular case if the person is convicted of any offense or charge, including a lesser included offense or charge.

(2) All public records of a person required to post bond under the provisions of § 38-3-109 shall be removed and destroyed as required by this chapter upon the expiration of any bond required, if no surety on the bond is required to fulfill the obligations of the bond.

(3) Upon petition by a defendant in the court that entered a nolle prosequi in the defendant's case, the court shall order all public records expunged.

(4) For purposes of this section, "court" includes any court exercising juvenile jurisdiction.

(5) All public records concerning an order of protection authorized by title 36, chapter 3, part 6, which was successfully defended and denied by the court following a hearing conducted pursuant to § 36-3-605, shall, upon petition by that person to the court denying the order, be removed and destroyed without cost to the person.

(6) Records expunged pursuant to petitions filed under subdivisions (a)(1)(A)(i) - (a)(1)(A)(iv) shall be without cost to the person. The administrative office of the courts shall establish a uniform fee that shall be charged to each petitioner for a petition for expungement of records pursuant to subdivision (a)(1)(A)(v) in an amount not to exceed the amount necessary to defray the cost of administering the provisions of subdivision (a)(1)(A)(v).

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.